

Fair Political Practices Commission

Memorandum

To: Chairman Randolph, Commissioners Blair, Downey, Karlan and Knox

From: John W. Wallace, Assistant General Counsel
Luisa Menchaca, General Counsel

Subject: September 2003 Work Plan Revisions

Date: August 25, 2003

I. INTRODUCTION

Each year the Commission approves a regulatory work plan for the next calendar year.¹ The plan provides for quarterly work plan revisions. Attached is the September update to the regulatory work plan for calendar year 2003. (See attachment 1.)

Currently, there are 31 items on the regulation calendar under five category headings (attached). Sixteen items have been completed, leaving 15 remaining items. Section II of the memorandum discusses recommended revisions to the calendar.

II. PROPOSED REVISIONS²

A. STATUTORILY REQUIRED OR OTHERWISE HIGH-PRIORITY ITEMS

NO CHANGES

B. ON-GOING PROJECTS: Campaign

- **Item 1. Proposition 34 Update:** At the outset of its implementation of Proposition 34, the Commission made a conscious decision to interpret the measure through the public rulemaking process rather than through advice letters. In the years since Proposition 34 was enacted, the Commission has adopted or amended over 40 regulations and issued two opinions relating to its provisions. In addition, the Commission made several major policy decisions, first pertaining to the campaign reporting requirements under the new law, then focusing on discrete areas such as outstanding net debt, transfers, carry-over, and expenditure limits. November 2002 was the first general election to which these provisions applied. Staff

¹ See staff memorandum dated November 26, 2002, *Adoption of 2003 Regulation Calendar*.

² Several items were changed based on direction from the Commission or with Commission consent. These items have been added to the current calendar without any additional discussion. These items include the movement of the pre-notice hearing on affiliated entities (Sec. B, Item 5) to December and Segmentation to September for adoption (Sec. C, Item 3) and the addition of the section 1090 study (Sec. C, Item 10).

anticipated that there would be a need for further review of the implementation of Proposition 34. Consequently, a general update has been added to the calendar.

CHANGE: Staff is recommending the removal of this item from this year's calendar. To the extent issues have arisen under Proposition 34 (such as regarding recall elections), the Commission has addressed these as individual regulatory projects. Thus, for this year, we have no items for the Proposition 34 update.

- **Item 9. Regulation 18427.1 Notification to Contributors of \$5,000 or More:** Vigo Nielsen of Nielsen Merksamer has requested amendment of this regulation to clean up ambiguous language. Mr. Nielsen proposes an amendment to regulation 18427.1(b) to clarify the notice to major donors that they must file a Late Report if their contribution or expenditure occurs during the late contribution period. The Commission agreed to this clarifying regulatory amendment.

CHANGE: This item has been set for September, but it has been placed on hold. Earlier this year, SB 1072 (Burton) was introduced which, if enacted, will amend the definition of "late contribution" in Government Code section 82036 to include contributions made to political party committees during the 16 days prior to any state election. This would necessitate a parallel amendment to regulation 18427.1. Thus, we would propose postponing amendments to the regulation until we know the outcome of the legislation.

- **Item 10: Proposition 34 and Recall Elections:** Proposition 34 exempts a state candidate who is the target of a recall election from its contribution limits. This project would place this exception in a regulation, and clarify the treatment of these types of elections under other provisions of the Act, such as the reporting rules in Chapter 4.

CHANGE: The regulation was adopted in July. However, due to public comment, further fact sheet revisions were discussed and adopted in August.

C. ON-GOING PROJECTS: CONFLICT OF INTEREST AND OTHERS

- **Item 2. Conflict of Interest and General Plans.** Some agencies are viewing general plan amendments as coming within the purview of "zoning or rezoning" decisions under subdivisions (a)(1) and (a)(6) of regulation 18704.2. Because general plans cover the entire jurisdiction, officials of these agencies believe they cannot participate in such decisions unless the "public generally" or "legally required participation" exceptions apply. This results in substantial difficulties, in that all of the members of a governing board of an agency may be unable to participate in some of the most fundamental decisions affecting the entire jurisdiction. Staff is anticipating regulatory action involving clarification of and refinement to the conflict-of-interest rules as applied to these types of decisions. This project will also include consideration of the "segmentation and bifurcation" procedures referred to in Commission advice letters. The procedure is used when a governmental decision may be "segmented" into a series of decisions in which a public official may have a conflict in one decision in the series but not others.

CHANGE: This item was considered in June with Commission guidance provided. However, due to the expansive scope of the project, we are proposing eliminating plans for adopting regulations in August and instead, setting up dates for an interested persons meeting in October. The segmentation regulation, after a second pre-notice discussion in August, will be considered for adoption in September.

- **Item 9. Disclosure of Incentive Income (*In re Hanko* (2002) O-02-88):** On August 9, 2002, the Commission adopted *In re Hanko*, which held that payments to a hospital district director from her employer will be attributed to a purchaser of her employer's products when the public official: (1) has been employed to purposefully direct sales or marketing activity toward the purchaser; (2) has indirect contact with the purchaser, intended by the public official to general sales or business; and (3) has a direct relationship between the purchasing activity of the purchaser and the amount of the incentive compensation received by the public official. Where these requirements are met, both the purchaser and the employer are considered sources of income to the official for purposes of sections 87100 and 87103. Consistent with this holding, the Commission directed staff to investigate possible amendment of Commission regulations to require disclosure of incentive income, similar to that currently required under the "commission income" regulation.

CHANGE: Pre-notice discussion of this item has been pushed to September 2003. Adoption will continue to be set for October.

D. OTHER MISCELLANEOUS ITEMS

NO CHANGES

E. NEW ITEMS

- **New Item Not Included: Amendment to Regulation 18901:** Section 89001, as construed by regulation 18901 (attachment 2b) provides that a mass mailing is prohibited if: (1) the items are delivered, by any means, to the recipient at his or her residence, place of employment or business, or post office box; (2) the costs of distribution are paid for with public moneys or the costs of design, production, and printing are paid with public moneys of \$50 or more; (3) the number sent is 201 or greater substantially similar items in a single calendar month (excluding any item sent in response to an unsolicited request), and (4) the item either *features* an elected officer affiliated with the agency which produces or sends the mailing, or the item includes the name, office, photograph, or other reference to an elected officer affiliated with the agency which produces or sends the mailing, *and* is prepared or sent in cooperation, consultation, coordination, or concert with the elected officer. "Features an elected officer" is defined as the inclusion of the elected officer's photograph or signature, or the singling out of the elected officer by the manner of display of his or her name or office in the layout of the document, such as by headlines, captions, type size, typeface, or type color.

Senator Ross Johnson has asked that the Commission expand the definition to include what he considers to be “puff” pieces that favor an incumbent. His letter and a memorandum discussing the issue are attached at Attachment 2c.

NO CHANGE: Staff does not recommend adding this item to the regulatory calendar. Attachment 2a is a staff memorandum discussing the issue further.

Attachments

1. Regulation Chart
2.
 - (a) Staff memorandum on Proposal to Amend Regulation 18901
 - (b) Text of Regulation 18901
 - (c) Letter from Senator Ross Johnson, dated April 8, 2003